

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS APPEAL NO. 274 OF 2005

IN

WRIT PETITION NO. 1801 OF 2004

JALEEL A.M.I. SHAIKH .. APPELLANT

Versus

THE GENERAL MANAGER,
BEST Undertaking .. RESPONDENTS

Smt. Neeta Karnik for appellant

Mr. S.K. Talsania i/b Crawford Bayley & Co. for R

CORAM:-SMT. RANJANA DESAI &

D.B. BHOSALE, JJ.

DATED:- 9/1/06

P.C.

. We have heard learned counsel for the appellant.

2. In our opinion, the present Letters Patent Appeal is not maintainable. In this connection, we may refer to the judgment in Letters Patent Appeal No. 41 of 2005 in Writ Petition No. 5180 of 1996 delivered on 19/9/05 by the Division Bench of this court to which one of us (D.B. Bhosale, J.) is a

party. In that case this court was considering the maintainability of an appeal under clause 15 of the Letters Patent in cases where Articles 226 & 227 are mentioned in the title. This court observed that mere mention of Article 226 will not make an appeal maintainable under clause 15, if in pith and substance what was to be exercised as jurisdiction of this court and what was exercised was the supervisory jurisdiction of this court. We may refer to the following observations of the Division Bench of this court.

"In our opinion, only in cases where a judicial or quasi judicial authority or Tribunal is not covered by the power of superintendence under Article 227 that a writ of certiorari or a writ in the nature of certiorari may be issued to prevent occurring of injustice."

3. In this case it cannot be said that the judicial authority whose order is impugned is not covered by the power of superintendence of this court under Article 227 of the Constitution of

India. The Letters Patent Appeal is thus not maintainable.

4. In any case even on merits, we feel that no case is made out by the appellant. The charge against the appellant was that he had unauthorisedly and habitually remained absent. Inquiry was conducted and he was removed from service on 14/2/95.

5. The learned counsel for the appellant drew our attention clause 20(f) of Standing Orders of The B.E.S. & T Undertaking (of the Municipal Corporation of Greater Bombay) which reads thus;

"20(f). Habitual absence without leave or absence without leave for more than fifteen consecutive days or overstaying sanctioned leave without sufficient grounds or proper or satisfactory explanation".

She submitted that admittedly the appellant was absent without leave for a period of 9 days, therefore, the appellant's case will not fall within the ambit of clause 20(f) of Standing Orders. His absence, therefore, cannot be called

an act of misconduct.

6. We are not impressed by this submission, for the simple reason that there was sufficient material before the Labour Court to come to a conclusion that remaining absent from work has become a habit with the appellant. At least on five occasions earlier he was punished for remaining absent, yet he has not chosen to improve his behaviour.

7. In the circumstances, in our opinion no interference is necessary with the impugned order of the learned Single Judge, as the appellant has been reinstated in service. Continuity of service has been granted to him. Denial of backwages is justified in the facts of this case.

8. Appeal is dismissed.

(SMT. RANJANA DESAI, J.)

(D. B. BHOSALE, J.)